

# PUBLICATION

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## Tennessee's Rule Shift for Private Fund Advisers' Registration

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Effective December 25, 2023, Tennessee Rule 0780-4-3-.05 was amended to include a new exemption to registration requirements for investment advisers under Tenn. Code. Ann. § 48-1-109 (the Amended Rule). In the past, advisers to private funds could be exempt from registration as investment advisers so long as such persons had less than 15 clients over the preceding 12 months, did not hold themselves out to the public as an investment adviser, and did not advise any investment company registered under the Investment Company Act (the Less than 15 Clients Exemption). The Amended Rule did not remove the Less than 15 Clients Exemption, but it now includes an additional narrow and specific exemption for advisers to companies formed for the purpose of pooling investors' capital and investing such capital in investment securities with less than 100 beneficial owners with no intention of going public (Private Funds). The term "private fund adviser" means any person who provides investment advice to a Private Fund, such as the manager or general partner of a Private Fund.

The new *private fund adviser* exemption has three primary requirements: (1) neither the adviser nor any advisory affiliates would be disqualified under Rule 506(d)(1) of SEC Regulation D; (2) the adviser must file, with the State, each report that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4; and (3) the adviser must pay an initial reporting fee of \$150 to the state and an annual renewal reporting fee of \$150. In addition, a *private fund adviser* who advises at least one Private Fund that is not a venture capital fund shall: (1) only advise Private Funds whose outstanding securities are beneficially owned by qualified clients<sup>1</sup>; (2) each beneficial owner shall receive a disclosure in writing that includes, (i) all services to be provided to the beneficial owners; (ii) all duties the adviser owes to the beneficial owners; and (iii) any other material information affecting the rights and responsibilities of the beneficial owners; and (3) each adviser shall obtain annual audited financial statements of each Private Fund and deliver such audited financial statements to each beneficial owner in the fund.

In light of the Amended Rule, it is important that persons who advise Private Funds consider the exemptions afforded under the Amended Rule, and whether any actions are required to maintain an exemption from registration as an investment adviser under Tennessee securities laws. For more information on this Amendment or assistance with maintaining compliance with the securities rules of the State of Tennessee, please contact [Mary Ann Jackson](#), [Drew T. Yonchak](#), [Lori H. Patterson](#), or [Zachary S. Ishee](#).

<sup>1</sup> The term "qualified client" is defined in SEC Investment Adviser Rule 205-3 and includes a natural person meeting a certain minimum threshold for assets under management with the adviser or a minimum net worth (excluding the value of the person's personal residence), with each threshold adjusted periodically based on inflation. The current assets under management threshold is \$1.1 million, and the current net worth threshold is \$2.2 million pursuant to an SEC Order issued June 17, 2021.

